

1 RICHARD B. COHEN  
Antitrust Division  
2 U.S. Department of Justice  
450 Golden Gate Avenue  
3 Box 36046, Room 10-0101  
San Francisco, California 94102  
4 Telephone: (415) 436-6660  
Cal. Bar #: 79601  
5  
6 Attorney for the United States  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

11 STATE OF OREGON, ex rel., )  
Attorney General HARDY MYERS )  
12 )  
STATE OF WASHINGTON, ex rel., )  
13 Attorney General )  
CHRISTINE O. GREGORIE, )  
14 )  
STATE OF CALIFORNIA, ex rel., )  
15 Attorney General )  
DANIEL LUNGREN, )  
16 )  
17 UNITED STATES OF AMERICA, )  
18 Plaintiffs, )  
19 v. )  
20 JEFF MULKEY, JERRY HAMPEL, )  
TODD WHALEY, BRAD PETTINGER, )  
21 JOSEPH SPEIR, THOMAS TIMMER, )  
RICHARD SHELDON, )  
22 DENNIS STURGELL, ALLAN GANN )  
and RUSSELL SMOTHERMAN, )  
23 Defendants. )  
24

CIVIL ACTION

NO. 97-234MA

COMPETITIVE IMPACT  
STATEMENT - Antitrust

Filed: February 11, 1997

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1       The Oregon defendant fishermen are not members of a  
2 fishermen's marketing association. They are thus not entitled to  
3 the exemption given to fishermen's marketing associations by the  
4 Fishermen's Collective Marketing Act of 1934 ("FCMA"), 15 U.S.C. §§  
5 521-522. The exemptions provided by the FCMA do not apply to  
6 fishermen who do not belong to fish marketing associations formed  
7 pursuant to the FCMA or to FCMA association members who enter into  
8 marketing agreements with non-FCMA association fishermen. Price  
9 fixing and horizontal boycott agreements which are not protected by  
10 the FCMA are per se violations of §1 of the Sherman Act (15 U.S.C.  
11 §1) and are subject to criminal prosecution by the United States  
12 Department of Justice. The United States chose not to proceed  
13 criminally in this matter because most of the defendants mistakenly  
14 believed their conduct was protected by the FCMA from prosecution  
15 under the Sherman Act.

16       The United States and the states of Oregon, California, and  
17 Washington contend and were prepared to show at trial, that  
18 beginning in or about December 1995 and continuing up until at  
19 least January 1996, the defendants were leaders in a conspiracy  
20 with unnamed co-conspirators to restrain competition among  
21 commercial crab fishermen in violation of § 1 of the Sherman Act.  
22 The conspiracy consisted of an agreement and concert of action  
23 between the defendants and co-conspirators to fix the "ex vessel"  
24 price (price at which fishermen sell their catch to purchasers such  
25 as processors) at a minimum of \$1.25 per pound and to eliminate  
26 competition among commercial fishermen in the sale of crab. In

1 furtherance of this conspiracy the defendants and co-conspirators:  
2 (1) agreed to sell crab at a minimum "ex vessel" price of \$1.25 per  
3 pound; (2) agreed not to fish for crab until all purchasers  
4 operating in the major West Coast crab fishing ports had agreed to  
5 pay a minimum "ex vessel" price of \$1.25 per pound; and (3)  
6 compelled, through threats of physical and economic harm,  
7 harassment and other forms of intimidation, other fishermen not to  
8 fish for crabs until all the purchasers agreed to pay a minimum  
9 \$1.25 "ex-vessel" price.

10 This conspiracy fixed the "ex vessel" price of crab sold by  
11 commercial fishermen, eliminated price and other forms of  
12 competition among commercial fishermen in the sale of crab and  
13 deprived purchasers of commercial crab of the benefits of free and  
14 open competition in the sale of crab.

15 III.

16 EXPLANATION OF THE PROPOSED CONSENT DECREE

17 The United States and the defendants have stipulated that the  
18 Court may enter the proposed Consent Decree after compliance with  
19 the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h).  
20 The proposed Consent Decree provides that its entry does not  
21 constitute any evidence against or admission by either party with  
22 respect to any issue of fact or law.

23 Under the provisions of Section 2(e) of the Antitrust  
24 Procedures and Penalties Act, 15 U.S.C. § 16(e), the proposed  
25 Consent Decree may not be entered unless the Court finds that entry  
26 is in the public interest. Section XII of the proposed Consent

1 Decree sets forth such a finding.

2       The proposed Consent Decree is intended to ensure that the  
3 defendants discontinue all practices which restrain competition  
4 among commercial fishermen.

5 A. Prohibitions And Obligations

6       Under Section IV of the proposed Consent Decree, the  
7 defendants are enjoined from participating in any discussion,  
8 communication or agreement, except as members of FCMA fishermen's  
9 marketing associations interacting with other members of such  
10 associations, regarding: (1) the "ex vessel" prices to be  
11 negotiated between purchasers and the defendants; (2) any terms or  
12 conditions to be offered for the sale of seafood; or (3) refraining  
13 from fishing while commercial fishermen are negotiating with  
14 purchasers on an "ex vessel" price. Section IV also enjoins the  
15 defendants from requesting or coercing other fishermen to refrain  
16 from fishing or to sell fish to processors at specified prices or  
17 under specified terms or conditions. The defendants are also  
18 enjoined from any interference with any other commercial  
19 fishermen's business through threats or other means of  
20 intimidation. The Consent Decree further enjoins the defendants  
21 from impeding, obstructing, or preventing any person from  
22 processing, purchasing, or selling or offering to purchase or sell  
23 crab or any other seafood. Finally, the Consent Decree restrains  
24 the defendants from compelling any fishermen or other person to  
25 become a member, or to participate in the activities, of any  
26 association.

1 Section V. of the Consent Decree requires the defendants to  
2 pay the states of Oregon, California and Washington pursuant to ORS  
3 646.760 and ORS 180.095, RCW 19.86.080 and 19.86.090, and Cal.  
4 Prof. & Bus. Code 16750 \$90,874.00 for civil penalties and  
5 reimbursement of attorney fees and investigative costs.

6 B. Scope Of The Proposed Consent Decree

7 Section XI. of the proposed Consent Decree provides that the  
8 Consent Decree shall remain in effect for five years.

9 Section III. of the proposed Consent Decree provides that the  
10 Consent Decree shall apply to the defendants and all of their  
11 managers, agents, employees, affiliates, successors and assigns,  
12 and to those persons in active concert or participation with any of  
13 them who shall have received actual notice of the Consent Decree.

14 C. Effect Of The Proposed Consent Decree On Competition

15 The relief set out in the proposed Consent Decree is designed  
16 to prevent recurrence of the activities alleged in the Complaint.  
17 The proposed Consent Decree's provisions are intended to ensure  
18 that commercial crab fishermen act independently, except as members  
19 of a FCMA fish marketing association interacting with other  
20 association members, in any marketing or pricing decisions and that  
21 they not interfere with the marketing and price decisions of other  
22 commercial crab fishermen.

23 IV.

24 ALTERNATIVES TO THE PROPOSED CONSENT DECREE

25 The alternative to the proposed Consent Decree would be a full  
26 trial of the case. In the view of the Department of Justice and

1 the states of Oregon, California and Washington, such a trial would  
2 involve substantial cost to the plaintiffs and is not warranted  
3 since the proposed Consent Decree provides almost all the relief  
4 sought in the Complaint.

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6 V.

7 REMEDIES AVAILABLE TO PRIVATE LITIGANTS

8 Section 4 of the Clayton Act (15 U.S.C. § 15) provides that  
9 any person who has been injured as a result of conduct prohibited  
10 by the antitrust laws may bring suit in federal court to recover  
11 three times the damages suffered, as well as costs and reasonable  
12 attorney fees. Under the provisions of Section 5(a) (15 U.S.C.  
13 § 16(a)), this Consent Decree has no prima facie effect in the  
14 lawsuits which may be brought against the defendants.

15 VI.

16 PROCEDURES AVAILABLE FOR  
MODIFICATION OF THE PROPOSED CONSENT DECREE

17 As provided by the Antitrust Procedures and Penalties Act, any  
18 person believing that the proposed Consent Decree should be  
19 modified may submit written comments to Christopher S Crook, Acting  
20 Chief, San Francisco Office, U.S. Department of Justice, Antitrust  
21 Division, 450 Golden Gate Avenue, Box 36046, Room 10-0101, San  
22 Francisco, California 94012, within the 60-day period provided by  
23 the Act. The comments and the Government's responses to them will  
24 be filed with the Court and published in the Federal Register. All  
25 comments will be given due consideration by the Department of  
26 Justice, which remains free to withdraw its consent to the proposed

1 Consent Decree at any time period to its entry if it should  
2 determine that some modification of the Consent Decree is necessary  
3 to the public interest. The proposed Consent Decree itself  
4 provides that the Court will retain jurisdiction over this action,  
5 and that the parties may apply to the Court for such orders as may  
6 be necessary or appropriate for the modification or enforcement of  
7 the Consent Decree.

8 VII.

9 DETERMINATIVE DOCUMENTS

10 No materials and documents of the type described in Section  
11 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C.  
12 § 16(b)) were considered in formulating this proposed Consent  
13 Decree. Consequently, none are filed herewith.

14  
15 Dated: February 6, 1997

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18 CHRISTOPHER S CROOK

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20 RICHARD B. COHEN

21 Attorneys  
22 Antitrust Division  
23 U.S. Department of Justice  
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